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No. 15584

United States
Court of Appeals
for the Ninth Circuit

CHANAN DIN KHAN,

Appellant,

vs.

BRUCE G. BARBER, District Director, United States Immigration and Naturalization Service,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Northern District of California.
Northern Division.

FILED
JUL 29 1957
PAUL P. O'BRIEN, CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—7-19-57

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Attorneys for the Defendant.

In the District Court of the United States for the Northern District of California, Northern Division

Civil Action No. 7447

CHANAN DIN KHAN,

Plaintiff,

vs.

BRUCE G. BARBER, District Director, United States Immigration and Naturalization Service,

Defendant.

COMPLAINT FOR DECLARATORY RELIEF AND INJUNCTION

Plaintiff complains of defendant and alleges:

I.

This is an action of a civil nature brought by plaintiff to review an order of defendant ordering him deported, and to declare the same void, and to enjoin defendant from executing said order.

II.

This action is brought under the provisions of Section 10, et seq., of the Administrative Procedure Act, 5 USC 1009, and of the Immigration and Nationality Act of 1952, 66 Stat. 208, and of the 14th Amendment to the United States Constitution.

III.

That on June 29, 1956, at San Francisco, California, one Monroe Kroll, Special Inquiry Officer

of the United States Department of Justice, Immigration and Naturalization Service, made and entered his order that plaintiff be deported from the United States to Afghanistan on the ground that plaintiff is a deportable alien because he has twice been convicted of crimes involving moral turpitude, to wit, violation of Section 145(b), United States Internal Revenue Code, income tax evasion.

IV.

That plaintiff, though a resident of this country since about April 25, 1923, is a native of Afghanistan, and does not read, write, speak or understand the English language well, and while he admits his conviction of violating the Internal Revenue Code, alleges that the facts and circumstances surrounding his offense were such that the crime did not involve moral turpitude, and that he is not therefore a deportable alien within the meaning of the Immigation and Nationality Act of 1952.

V.

Plaintiff also alleges that his conviction at a single trial by the same jury and before the same judge, though of two counts of a two-count indictment, does not represent two distinct crimes within the meaning of Section 241(a)(4), Immigration and Nationality Act of 1952.

VI.

That after the order of deportation entered as aforesaid, plaintiff duly and seasonably filed his

appeal to the United States Department of Justice, Board of Immigration Appeals, which appeal was on or about August 31, 1956, dismissed, and said deportation order is now final; that plaintiff has exhausted his administrative remedies herein.

VII.

That defendant is now, and at all times mentioned herein has been the District Director, United States Immigration and Naturalization Service, and is sued herein in his official capacity as such officer.

VIII.

That the defendant herein threatens to execute his said deportation order forthwith, and threatens to take plaintiff into custody and deport him to Afghanistan before this action may be heard on its merits, and unless restrained by order of this Court, defendant will execute, or cause to be executed, his order deporting plaintiff as aforesaid, and will thereby deprive plaintiff of all opportunity to be heard herein and to have the validity of said order tested in Court or judicially reviewed.

IX.

That a real controversy exists between the parties hereto as to the validity of said order and as to the justification therefor, plaintiff claiming that he is not a deportable alien within the meaning of the Immigration and Nationalization Law of 1952, since the crimes of which he was convicted do not represent two distinct crimes, and that his offense does

not involve moral turpitude, and defendant claiming him to be deportable because his offense represents two crimes and each involved moral turpitude.

Wherefore, plaintiff prays judgment as follows:

1. That this Court issue an Order to Show Cause to defendant, ordering him to show cause, if any he has, at some convenient time and place, why he should not be restrained from executing said deportation order pending review of the same by this Court, and that pending the hearing on such order, he be so restrained, and after hearing the enforcement of said order be forever enjoined.

2. That this Court review said order, and after such review, enter its judgment declaring the same to be null and void for the reason that plaintiff has not in fact been twice convicted of crimes involving moral turpitude within the meaning of the Immigration and Nationality Act of 1952.

3. That plaintiff be awarded any other and further relief as to the Court seems just and proper.

COLLEY AND SAKUMA,

By /s/ NATHANIEL S. COLLEY,
Attorneys for Plaintiff.

Duly verified.

[Endorsed]: Filed September 27, 1956.

[Title of District Court and Cause.]

ANSWER

Comes Now the defendant, Bruce G. Barber, District Director, Immigration and Naturalization Service, and answers the complaint herein as follows:

I.

Defendant admits the allegations of Paragraphs III, VI and VII.

II.

Answering Paragraph IV, defendant admits that plaintiff last entered the United States at Baltimore, Maryland, on April 25, 1923, as a deserting seaman, and that he claims to be a native of Afghanistan. The record of the Immigration and Naturalization Service hearings conducted with regard to the plaintiff do not support the allegation that he does not read, write or speak the English language well. Said allegation is therefore denied. Plaintiff was convicted on January 25, 1952, in the United States District Court for the Northern District of California of two violations of Title 26 U.S.C. 145(b). Count One of the indictment charged that plaintiff wilfully and knowingly attempted to defeat and evade income taxes due for the year 1946 by understating his income, and Count Two charged that he wilfully and knowingly attempted to defeat and evade income taxes due for the year 1947 by understating his income. Plaintiff was sentenced on Count One to 18 months imprisonment,

and on Count Two to pay a fine of $2,500, with five years probation, to become effective after his release from confinement on Count One. Defendant alleges that the crimes for which plaintiff was indicted and convicted as a matter of law involved moral turpitude and the facts and alleged facts and circumstances surrounding his offenses are immaterial.

III.

The allegations of Paragraph V are not of fact, but state a conclusion of law with which defendant disagrees.

IV.

Answering Paragraph VIII, defendant alleges that he will perform his duties as District Director of the Immigration and Naturalization Service in accordance with the law and regulations applicable thereto, but that pending the judgment of this Court upon the complaint filed herein, the deportation of the plaintiff will be withheld.

V.

Answering Paragraph IX, defendant alleges that the facts pertaining to the final order of deportation outstanding against the plaintiff are to be determined solely and only from the certified record of the Immigration and Naturalization Service which will be offered into evidence as an exhibit; that two issues of law are raised by plaintiff in his complaint herein: (1) That the two crimes for the commission of which he was indicted and convicted

do not involve moral turpitude, and (2) that because the two crimes were joined in one indictment as two separate counts that they do not represent two distinct crimes within the meaning of Section 241(a)(4) of the Immigration and Nationality Act of 1952.

Wherefore, defendant prays the judgment of this Court discharging the Order to Show Cause denying the relief prayed for by the plaintiff and dismissing the complaint and action herein.

LLOYD H. BURKE,
United States Attorney;

By /s/ CHARLES ELMER COLLETT,
Assistant United States
Attorney.

[Endorsed]: Filed October 10, 1956.

[Title of District Court and Cause.]

MEMORANDUM AND ORDER

By this action plaintiff, a resident alien, seeks a judicial declaration that a deportation order issued by defendant in June, 1956, is invalid. All administrative remedies having been exhausted, jurisdiction in this Court obtains under the provisions of § 10 of the Administrative Procedure Act (5 U.S.C.A., § 1009).

The deportation order was based on the provisions of Title 8, U.S.C.A., § 1251(a)(4),[1] plaintiff having been convicted in 1952 on two counts of income tax evasion under § 145(b) of the Internal Revenue Code of 1939.[2]

The order of deportation can be sustained only if it is determined that:

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[1]Title 8, U.S.C.A., § 1251(a)(4) provides:

"(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(4) Is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial;"

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[2]Title 26, U.S.C.A., § 145(b) (1939 Code), provides:

"Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who wilfully fails to collect or truthfully account for and pay over such tax, and any person who wilfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution."

(1) The crime of wilfully attempting to evade income tax liability under § 145(b), supra, is a crime involving "moral turpitude," and

(2) Conviction at a single trial on two separate counts of income tax evasion under § 145(b), supra, was in fact a conviction of two crimes "not arising out of a single scheme of criminal misconduct."

Before discussing the question of "moral turpitude," the Court feels obliged first to examine the two offenses of which plaintiff was convicted (i.e., wilfully attempting to evade the payment of income tax for each of the years 1946 and 1947), and determine whether such offenses arose out of a "single scheme of criminal misconduct."

No authorities having been cited by the parties, and none having been found, to assist in interpreting the language in § 1251(a)(4), supra, the question appears to be one of first impression. In 1952 Congress wrought a change in the definition of a deportable convicted alien. Prior to the 1952 Act, under the applicable provisions of former § 155(a) (Title 8, U.S.C.A.), in order to be deportable for crimes involving moral turpitude committed at any time after entry, the alien must have been twice sentenced to a term of imprisonment in excess of one year. This section, as it thus read, was interpreted to mean that the alien must have been convicted and sentenced on two separate occasions, and not in one trial (Fong Haw Tan vs. Phelan, 333 U. S. 6; see also Jordan vs. DeGeorge, 341 U. S.

223). However, in 1952, for reasons not made clear in the bill itself, or even in the Committee reports,[3] Congress modified the language of this section to such an extent that an alien becomes deportable if he is merely twice convicted of crimes involving moral turpitude, whether the two convictions are in one trial or separate trials, and whether the alien is sentenced to a term of imprisonment as a result of such convictions. The language of the modification with which, as has already been noted, we are here concerned is the proviso that the two convictions cannot be for crimes "arising out of a single scheme of criminal misconduct."

Plaintiff contends that two violations of § 145(b) of the Internal Revenue Code of 1939, committed in consecutive years, manifests but a "single scheme"; the single scheme being, "to evade and defeat the federal income tax." While it is true that many separate offenses may be committed by an individual in the furtherance of some subjective predelection amounting to a general scheme of criminality, to hold that a mere lurking proclivity to commit certain kinds of offenses manifests a "single scheme" within the meaning of § 1251(a)(4), would be, in effect, to render nugatory a declared public policy to deport aliens who are convicted of two crimes involving moral turpitude. A

[3]Senate Report No. 1137, Jan. 29, 1952 (S. 2550); House Report No. 1365, Feb. 14, 1952 (H.R. 5678), and Conference Report No. 2096, June 9, 1952 (H.R. 5678).

more reasonable and rational interpretation of this language is that Congress contemplated nothing more than those situations where an alien's conviction is based on a multiple count indictment charging him with separate crimes, which were committed by the doing of a single act or a series of simultaneous or closely related and closely connected acts.[4]

The law is well established that a wilful attempt to evade the federal income tax under § 145(b) is a separate crime for each year such an attempt is made, and the offense is not a continuing one (Norwitt vs. United States, 195 F. 2d 127, cert. denied 344 U. S. 817). Plaintiff, in the case at bar, was convicted of wilfully attempting to evade the payment of income tax for the year 1946, and for committing the same offense twelve months later in connection with income tax due for 1947. Plaintiff's hidden desire to defraud the government of its taxes does not render the two separate acts, which he committed in furtherance of that desire, part of

[4]E.g.: Title 18, U.S.C.A., § 371 (conspiracy and the doing of an overt act); and see also 18, U.S.C.A., § 487 (counterfeiting, making and possessing dies); § 500 (forging and uttering a postal money order); § 641 (theft and possession of government property); and § 659 (theft and possession from an interstate shipment).

Although the Court is not bound by the statutory interpretations of the Board of Immigration Appeals, that body has placed a similar interpretation on this language. See: B. I. A., In the Matter of D——, Interim Decision No. 583, April 7, 1954; and Auerbach, Immigration Laws of the United States (1955), at page 132, et seq.

a "single scheme" within the reasonable and rational meaning of the phrase in § 1251(a)(4), being here considered. The Court is of the view that these two offenses more logically imply that plaintiff, in March of 1948 (when the 1947 tax was due), decided that his apparent success twelve months earlier warranted repetition. Two such separate and unrelated acts do not amount to a "single scheme of criminal misconduct." To reach a contrary conclusion would require the Court to assume that in 1947 (when the 1946 taxes were payable), defendant had then a fixed intention to commit another violation in 1948 as a part of a single scheme, and this frankly taxes the Court's credulity beyond the pale of reason.

Numerous attempts have been made to define what crimes involve "moral turpitude" for the purposes of determining whether an alien falls within the deportable classification set forth in § 1251(a)(4) of the 1952 Act, and § 155(a) of the prior act. Unquestionably the most helpful definition yet offered was given in the case of Jordan vs. DeGeorge, supra, wherein it was stated (p. 232):

> "Whatever else the phrase 'crime involving moral turpitude' may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. * * * Fraud is the touchstone by which this case should be judged. The phrase 'crime in-

volving moral turpitude' has without exception been construed to embrace fraudulent conduct."

The final question to be resolved is whether a violation of § 145(b) of the Internal Revenue Code of 1939 is a crime involving moral turpitude, as that phrase has been defined above by the Supreme Court.

Section 145(b) speaks in terms of "wilfulness," which has been defined by the Courts as meaning "bad faith," "bad purpose," "evil motive" and "tax evasion motive" (United States vs. Murdock, 290 U. S. 389; Spies vs. United States, 317 U. S. 492; Wardlaw vs. United States, 203 F. 2d 884). With these definitions in mind, the Courts have, with apparent unanimity, held that in order for a conviction under § 145(b) to stand, the Government is required to prove that the evading taxpayer had a specific intent to evade taxation, amounting to an intent to defraud the United States.[3] Fraud is so

[3] United States vs. Rosenblum, 176 F. 2d 321, cert. denied 338 U. S. 893; United States vs. Raub, 177 F. 2d 312; Norwitt vs. United States, supra [main text]; Wardlaw vs. United States, 203 F. 2d 884; Bloch vs. United States, 221 F. 2d 786; Legatos vs. United States, 222 F. 2d 678; and United States vs. Clark, 123 F. Supp. 608. Cf. Sierra vs. United States, 351 U. S. 131, at p. 134.

Plaintiff contends that the case of United States vs. Scharton, 285 U. S. 518, is determinative of the issue of whether fraud is an element in § 145(b). A close examination of that case, however, discloses that the Supreme Court decided only that in order for the government to avail itself of the 6-year

inextricably woven into the term, "wilfully" as it is employed in § 145(b), that it is clearly an ingredient of the offense proscribed by that section. Only by creating unwarranted semantic distinctions could a contrary conclusion be reached.

Similar tax offenses have been held to involve "moral turpitude" (Jordan vs. DeGeorge, supra; United States, ex rel., Berlandi vs. Reimer, 113 F. 2d 429; and Maita vs. Haff, 116 F. 2d 337),[6] and the Court is of the opinion that the crime set forth in § 145(b) squarely falls within the definition of moral turpitude laid down by the Supreme Court in Jordan vs. DeGeorge, supra. If proof tantamount to a showing of a specific intent to defraud is required to convict a man under § 145(b), then it cannot be said with any degree of consistency and logic that the crime involves no fraud for the purposes of deportation.

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statute of limitations for fraud actions, the statute under which it was prosecuting must be specifically couched in terms of fraud. Moreover, the recent case of Berra vs. United States, supra, sheds considerable doubt on plaintiff's interpretation of the Scharton case.

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[6]The Court does not find the case of United States vs. Carrollo, 30 F. Supp. 3, persuasive on this point in view of the conclusion reached by the Supreme Court in Jordan vs. DeGeorge, supra. The question of fraud as an element of moral turpitude was not reached in the Carrollo case, and the holding that income tax evasion did not involve moral turpitude was no more than a dictum.

It Is, Therefore, Ordered that plaintiff take nothing by his complaint on file in this action and that no order of restraint be issued against defendant in this case.

It Is Further Ordered that plaintiff's prayer that the order of deportation issued by defendant against plaintiff be declared null and void be, and it is, hereby denied.

And It Is Further Ordered that the defendant prepare findings of fact and conclusions of law, a form of judgment, and any other required documents, and lodge them with the Clerk of this Court pursuant to the applicable laws and the rules of this Court.

Dated: January 31, 1957.

/s/ SHERRILL HALBERT,
United States District Judge.

[Endorsed]: Filed January 31, 1957.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above action having come on regularly for hearing before the Honorable Sherrill Halbert, Judge of the above-entitled Court, Colley and Sakuma, attorneys at law, appearing for plaintiff, and Lloyd H. Burke, United States Attorney, and

Charles Elmer Collett, Assistant United States Attorney, appearing for defendant, and the matter having been argued, briefed and submitted, the Court makes the following findings of fact and conclusions of law:

Findings of Fact

I.

Plaintiff is an alien who last entered the United States as a deserting seaman at Baltimore, Maryland, on or about April 25, 1923.

II.

On January 25, 1952, plaintiff was convicted in the United States District Court for the Northern District of California on an indictment charging him on two counts with violations of Title 26, U.S.C., 145(b); Count One charged that plaintiff wilfully and knowingly attempted to defeat and evade income taxes due for the year 1946 by understating his income; Count Two charged that plaintiff wilfully and knowingly attempted to defeat and evade income taxes due for the year 1947 by understating his income.

III.

Plaintiff was sentenced on Count One to 18 months imprisonment and on Count Two, to pay a fine of $2,500 with five years probation.

IV.

Deportation proceedings were instituted against plaintiff, and upon the exhaustion of all adminis-

trative remedies plaintiff was ordered deported from the United States on the charge of having after entry been convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct.

V.

Plaintiff by his action herein seeks review of the final order of deportation.

VI.

Upon review of the certified record of the administrative proceedings, the Court finds that plaintiff was given a fair hearing and was afforded due process, and that the decision of deportability is based upon reasonable substantial and probative evidence.

Conclusions of Law

I.

Plaintiff after entry in the United States was convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct.

II.

Plaintiff is an alien illegally in the United States.

III.

The order of deportation issued by defendant against plaintiff is valid and lawful.

IV.

Plaintiff is entitled to no relief by his complaint herein.

Let judgment be entered accordingly.

Dated: February 19th, 1957.

/s/ SHERRILL HALBERT,
United States District Judge.

Affidavit of mail attached.

Lodged February 12, 1957.

[Endorsed]: Filed February 19, 1957.

In the United States District Court for the Northern District of California, Northern Division

Civil No. 7447

CHANAN DIN KHAN,

Plaintiff,

vs.

BRUCE G. BARBER, District Director, United States Immigration and Naturalization Service,

Defendant.

JUDGMENT

The above matter having been heard by the Honorable Sherrill Halbert, Judge of the above-entitled Court, and the Court having heretofore filed its Findings of Fact and Conclusions of Law, now, therefore,

It Is Hereby Ordered, Adjudged and Decreed that plaintiff is entitled to no relief by his complaint herein: that said complaint and action be and the

same are hereby dismissed, and that defendant have judgment for his costs in the sum of $20.00.

Dated: February 19, 1957.

/s/ SHERRILL HALBERT,
United States District Judge.

Affidavit of service by mail attached.

Lodged February 12, 1957.

[Endorsed]: Filed February 19, 1957.

Entered February 20, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Chanan Din Khan, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on February 20, 1957.

Dated: February 28, 1957.

COLLEY AND SAKUMA,

By /s/ NATHANIEL S. COLLEY,
Attorneys for Appellant.

[Endorsed]: Filed February 28, 1957.

[Title of District Court and Cause.]

BOND

Know All Men by These Presents, That Chanan Din Khan, as principal and Firemans Fund Indemnity organized and existing under and by virtue of the laws of the State of California, and duly licensed to transact a general surety business in the State of California, as surety are held and firmly bound unto Defendant, Bruce G. Barber, District Director United States Immigration and Naturalization Service, his executors, administrators, or assigns, in the sum of Two Hundred Fifty ($250.00) dollars, lawful money of the United States of America, to be paid unto the said Defendant, Bruce G. Barber, District Director, United States Immigration and Naturalization Service, his executors, administrators, or assigns, to which payment well and truly to be made, and do bind and oblige their heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with seal and dated this 11th day of March, A.D. 1957.

Whereas, the above-named Plaintiff, Chanan Din Khan, heretofore a citizen of the State of Afghanistan, commenced an action in the United States District Court, in and for the Northern District of California, Northern Division, against the said Bruce G. Barber, District Director United States Immigration and Naturalization Service.

State of California,
County of Sacramento—ss.

On this 11th day of March, 1957, before me, F. H. Wittpen, a Notary Public in and for said Sacramento County, State aforesaid, residing therein, duly commissioned and sworn, personally appeared Austin D. Vance, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Fireman's Fund Indemnity Company, and acknowledged to me that he subscribed the name of Fireman's Fund Indemnity Company thereto as principal, and his own as attorney in fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at my office in the said County of Sacramento, the day and year in this certificate first above written.

F. H. WITTPEN,
Notary Public in and for the County of Sacramento, State of California.

My commission expires April 14, 1957.

[Endorsed]: Filed March 11, 1957.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET APPEAL

It Is Hereby Ordered that the time within which to docket the appeal herein in the United States Court of Appeals for the Ninth Circuit be and the same is hereby extended to and including the 9th day of May, 1957.

Dated: April 9th, 1957.

/s/ SHERRILL HALBERT,
United States District Judge.

[Endorsed]: Filed April 9, 1957.

[Title of District Court and Cause.]

NOTICE TO PREPARE RECORD ON APPEAL

To the Clerk of the Above-Entitled Court:

An appeal having been taken herein, it is hereby requested that you prepare the record on appeal. Such record shall include the complaint, answer thereto, the memorandum opinion of the Court, the Findings of Fact and Conclusions of Law, the Judgment entered herein, the Notice of Entry of Judgment, the Notice of Appeal, this notice and a transcript of all oral stipulations or agreements entered into by the parties in open Court.

Dated: February 28, 1957.

COLLEY AND SAKUMA,

By /s/ NATHANIEL S. COLLEY,
Attorneys for Appellant.

[Endorsed]: Filed February 28, 1957.

[Title of District Court and Cause.]

ORDER EXTENDING TIME
TO DOCKET APPEAL

It Is Hereby Ordered that the time within which to docket the appeal herein in the United States Court of Appeals for the Ninth Circuit be and the same is hereby extended to and including the 6th day of June, 1957.

Dated May 9th, 1957.

/s/ SHERRILL HALBERT,
United States District Judge.

[Endorsed]: Filed May 9, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of

California, do hereby certify that the foregoing and accompanying documents listed below are the originals filed in this Court in the above-entitled case, and that they constitute the record on appeal herein.

1. Complaint.
2. Answer.
3. Memorandum and Order.
4. Findings of Fact and Conclusions of Law.
5. Judgment.
6. Appeal, Notice of.
7. Cost bond on appeal.
8. Order Extending Time to Docket Appeal.
9. Order Extending Time to Docket Appeal.
10. Notice to Prepare Record on Appeal.

In Witness Whereof, I have hereunto set my hand and the seal of said Court this 5th day of June, 1957.

[Seal] C. W. CALBREATH,
Clerk;

By /s/ C. C. EVENSEN,
Deputy Clerk.

[Endorsed]: No. 15584. United States Court of Appeals for the Ninth Circuit. Chanan Din Khan, Appellant, vs. Bruce G. Barber, District Director, United States Immigration and Naturalization Service, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Northern Division.

Filed June 6, 1957.

Docketed June 17, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

Case No. 15584

CHANAN DIN KHAN,

Appellant,

vs.

BRUCE G. BARBER, District Director, United States Immigration and Naturalization Service,

Respondent.

APPELLANT'S STATEMENT OF POINTS RELIED UPON

Appellant's main contentions are as follows:

1. That since he was convicted at a single trial on two counts of income tax invasion, his crime was not "two crimes not involving a single scheme of criminal misconduct," within the meaning of the Immigration and Nationality Act. This is true because evidence of tax evasion in one year would be admissible in a charge of evasion during the next year. The theory of admissibility in such a case is that the offenses were part of a single plan, scheme or design.

2. That income tax evasion (26 USC 145(b)) is not a crime involving moral turpitude within the meaning of the Immigration and Nationality Act. One may be guilty of violation of the section

through mere negligence. See: Remer vs. U. S. 205 Fed. 2d 277.

3. Unless the offense necessarily, by its very nature, involve fraud or moral turpitude, no deportation will lie. U. S. ex rel. Mylius vs. Uhl, 203 Fed, 152; Giglio vs. Neely, 208 Fed. 2d. 337. While it may be true that evasion of some tax laws may involve moral turpitude, violation of Section 145(b) of the Internal Revenue Code is not such a law. U. S. vs. Scharton, 285 U. S. 518.

COLLEY AND SAKUMA.

By /s/ NATHANIEL S. COLLEY.

[Endorsed]: Filed June 21, 1957.